

OFFICE OF THE ATTORNEY GENERAL

95-00221

JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

MAY 19 1995

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable D. Milburn Gross, Jr.
Assistant City Attorney
P.O. Drawer 339
Andalusia, AL 36420

Municipalities - Fire
Protection Tax - Fire
Departments - Rescue Squads

According to the language used in Act No. 94-346, proceeds from the fire protection tax levied pursuant to that Act are to be distributed by determining the number of eligible fire departments and eligible rescue squads in the county and dividing the proceeds on a "share and share alike" basis.

Dear Mr. Gross:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

How should the proceeds derived from the special tax created by Act No. 94-346 be distributed to the fire departments and rescue squads of Covington County?

FACTS, LAW AND ANALYSIS

The following explanation for the request is set out in your request:

The City of Andalusia contends that the Act can be interpreted in two ways. One way is to distribute the funds equally according to the taxes paid in each fire department or rescue squad's respective district. If this method is followed each fire department or rescue squad receives the exact amount of money paid as a property tax in the area that they protect. The other method is to determine the number of fire departments and rescue squads in Covington County and distribute an equal amount to all of the fire departments and rescue squads in Covington County. The City of Andalusia contends that the second method is grossly inequitable.

Act No. 94-346 proposed a constitutional amendment providing for fire protection in Covington County and levying a fire protection tax.

Regarding the distribution of the proceeds from this tax, Sections 1(c) and 1(f) provide:

"(c) The Revenue Commissioner of Covington County shall assess the tax herein provided for, and shall collect the fire tax in the same manner and method that other ad valorem taxes are collected. The proceeds of the tax shall be paid into a special county fund. Within thirty days of payment into the special fund, the county commission shall allocate the funds among the eligible fire departments and rescue squads. The funds shall be divided equally among the eligible fire departments and rescue squads.

* * *

"(f) Upon dissolution or abandonment of any eligible fire department or rescue squad, any remaining funds derived from this amendment or any assets purchased with funds derived from this amendment shall, after all indebtedness

has been satisfied, be transferred to the county commission. The funds and assets shall be reallocated by the county commission equally to the other fire departments and rescue squads. In the event there are no fire departments or rescue squads, the funds or assets shall be placed in the county general fund."
(Emphasis added.)

The proceeds from the tax are to be distributed among the eligible fire departments and rescue squads in the county. An eligible fire department and an eligible rescue squad are defined in Section 1(d) of Act No. 94-346 as follows:

"(d) An eligible fire department, for purposes of this amendment, means a fire department in Covington County that maintains an ISO-approved rating of at least Class 9, is certified under the Alabama Forestry Commission guidelines, and is a member in good standing of the Covington County Firefighters Association. An eligible rescue squad, for purposes of this amendment, means a rescue squad that is certified by the Alabama Association of Rescue Squads or Emergency Medical Services."

Thus, the proceeds are to be divided among the fire departments and rescue squads which meet these requirements.

Act No. 94-346 states that the tax proceeds are to be "divided equally" among the eligible fire departments and rescue squads. My research reveals that the courts have not defined "divided equally" except as it pertains to devises and bequests in wills and estates. However, "equally divided" has been determined to mean "share and share alike" and to indicate per capita division. 14A Words and Phrases.

Furthermore, the fundamental rule to be applied in construing a statute is to ascertain and give effect to the legislative intent as expressed in the statute. Gholston v. State, 620 So.2d 719 (Ala. 1993).

Considering the language used in Act No. 94-346, it is the opinion of the Attorney General that it was the intent

Honorable D. Milburn Gross, Jr.
Page 4

and purpose of the Legislature that the proceeds from the tax levied by that act be paid out by determining the number of eligible fire departments and eligible rescue squads in the county, and distributing an equal amount to each of the fire departments and rescue squads. If the Legislature had intended that the funds be distributed according to the taxes collected in a particular fire department or rescue squad district, it would have set this out in a more specific manner in the Act. It will take another constitutional amendment for the tax proceeds to be distributed in this manner.

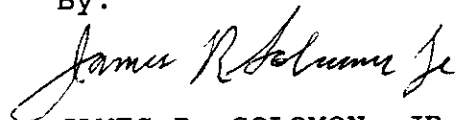

CONCLUSION

According to the language used in Act No. 94-346, proceeds from the fire protection tax levied pursuant to that Act are to be distributed by determining the number of eligible fire departments and eligible rescue squads in the county and dividing the proceeds on a "share and share alike" basis.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR. 
Chief, Opinions Division

JS/LKO/cw
G5.95/OP